Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

October Term, 1997

ROBERT A. GROSSI,

Petitioner,

v.

UNITED STATES,

Respondent.

On Petition For Writ Of Certiorari To The Seventh Circuit Court Of Appeals

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Does federal jurisdiction to prosecute bribery offenses under 18 U.S.C. § 666 lie when the defendant is an agent of a local municipality that received over $10,000 in federal funds annually, but the particular local government agency affected by the bribery transactions did not receive over $10,000 in federal funds annually?

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PRAYER

Petitioner Robert A. Grossi respectfully prays that a writ of certiorari issue to review the judgment and order of the Seventh Circuit.

OPINIONS BELOW

The district court's findings of fact and conclusions of law rendered at the conclusion of a bench trial are unreported, and attached hereto in Appendix B. The Seventh Circuit's opinion affirming Petitioner Robert A. Grossi's criminal conviction is published at 143 F.3d 348, and attached hereto in Appendix A.

JURISDICTION

On May 4, 1998, a panel of the Seventh Circuit affirmed Petitioner Robert A. Grossi's convictions for racketeering, 18 U.S.C. § 1962(c), bribery concerning programs receiving federal funds, 18 U.S.C. § 666(a)(1)(B) and extortion under color of official right, 18 U.S.C. § 1951. On May 29, 1998, the Seventh Circuit issued an order denying Petitioner's timely filed petition for rehearing with suggestion for rehearing *en banc*. Appendix C. This petition is filed within 90 days of the order denying the petition for rehearing and is therefore timely.

This Court's jurisdiction is invoked under 28 U.S.C. § 1254.

STATUTES INVOLVED

Title 18, United States Code, section 666 provides in pertinent part:

> (a) Whoever, if the circumstance described in subsection (b) of this section exists –
>
> (1) being an agent of an organization, or of a State, local, or Indian tribal government, or any agency thereof –
>
> * * *
>
> (B) corruptly solicits or demands for the benefit of any person, or accepts or agrees to accept, anything of value from any person, intending to be influenced or rewarded in connection with any business, transaction, or series of transactions of such organization, government, or agency involving anything of value of $5,000 or more;
>
> * * *
>
> shall be fined under this title, imprisoned not more than 10 years, or both.
>
> (b) The circumstance referred to in subsection (a) of this section is that the organization, government, or agency receives, in any one year period, benefits in excess of $10,000 under a Federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or other form of Federal assistance.
>
> * * *
>
> (d) As used in this section –
>
> (1) the term "agent" means a person authorized to act on behalf of another person or a

government and, in the case of an organization or government, includes a servant or employee, and a partner, director, officer, manager, and representative;

(2) the term "government agency" means a subdivision of the executive, legislative, judicial, or other branch of government, including a department, independent establishment, commission, administration, authority, board, and bureau, and a corporation or other legal entity established, and subject to control, by a government or governments for the execution of a governmental or intergovernmental program;

(3) the term "local" means of or pertaining to a political subdivision within a State;

(4) the term "State" includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States. . . .

STATEMENT OF THE CASE

1. Between 1981 and 1996, Petitioner Robert A. Grossi served as the elected supervisor of Bloom Township, Illinois, a local government unit under state law. Tr. 682. As a township supervisor, Grossi, pursuant to state law, administered Bloom Township's General Assistance Fund, a welfare program that operated at the supervisor's discretion, absent fixed criteria or adherence to state welfare standards. Tr. 578, 682.

During the years at issue under the indictment, Bloom Township's General Assistance Fund did not

directly receive or use state or federal funds. Tr. 682. Rather, the General Assistance Fund was entirely financed by local property taxes. Tr. 682.

Bloom had three other funds: a Corporate Fund; a Road and Bridge Fund; and a Public Activities Fund. Tr. 577. Between 1984 and 1993, Bloom Township's Corporate Fund received more than $10,000 annually from the federal government. Tr. 682. For instance, between 1988 and 1991, Bloom Township received federal monies for the Title III, Older Americans Act and the Summer Youth Employment Training Partnership Act. Tr. 590-97.

Bloom Township's four funds were segregated. Employees of the General Assistance Department, which administered general assistance programs, were paid solely from the General Assistance Fund for work done on behalf of the General Assistance Department. Tr. 682. As supervisor of the General Assistance Department, Grossi obtained separate bonding. Tr. 682. Bloom Township's General Assistance Fund also had tax identification numbers different from the General Fund, and underwent audits separate from other funds. Tr. 682.

2. As pertinent here, the indictment charged that in exchange for a 25% kickback, Grossi authorized the payment of $23,500 in medical bills incurred by patients of Drs. Russell Guzzo and Philip Piscopo, chiropractors who worked together in Bloom Township. R. 1. Money for the payments came from the General Assistance Fund. This alleged conduct formed the basis of the bribery and extortion charges, as well as a racketeering act. R. 1.

Pursuant to immunity grants, Drs. Russell Guzzo and Philip Piscopo each testified for the government. Tr. 425,

489. Their sins were numerous: they submitted bogus bills to the welfare fund; lied to the FBI when initially questioned; lied about an IRS investigation; failed to deposit checks from the General Assistance Fund into their corporation's main bank account; evaded income taxes; and failed to make restitution of their ill-gotten gains. *United States v. Grossi*, 143 F.3d 348, 349 (7th Cir. 1998); App. A at 2-3.

In a bench trial, the district court convicted Grossi of racketeering, bribery concerning programs receiving federal funds and extortion, while acquitting on a single bribery count. *United States v. Grossi*, No. 94 CR 799, Findings of Fact and Conclusions of Law (N.D. Ill., April 23, 1996) (Plunkett, J.); App. B. In reaching judgment, the trial court found that "Doctor Guzzo's story, without substantial corroboration, is not within hailing distance of beyond a reasonable doubt." *Id.* at 8. Nonetheless, the judge referred to points allegedly corroborating Guzzo's tale. The defense, however, argued that these points lacked record support. *United States v. Grossi*, No. 97-2723, Brief for Appellant at 40-43 (7th Cir.).

3. On appeal, the Seventh Circuit panel, Judge Easterbrook writing, principally dealt with Grossi's legal arguments relating to the § 666 charges. *United States v. Grossi*, 143 F.3d 348 (7th Cir. 1998); App. A. The court rejected Grossi's contention that § 666 jurisdiction did not lie because Bloom Township's General Assistance Fund did not receive in excess of $10,000 in federal funds annually. *Id.*

REASONS FOR GRANTING THE PETITION

I. CERTIORARI SHOULD BE GRANTED SO THIS COURT MAY EXAMINE A QUESTION LEFT OPEN IN *SALINAS V. UNITED STATES*, 118 S. Ct. 469 (1997): WHETHER FEDERAL CRIMINAL JURISDICTION UNDER 18 U.S.C. § 666 IS CONFERRED WHEN THE PARTICULAR LOCAL GOVERNMENT AGENCY AFFECTED BY BRIBERY DID NOT RECEIVE OVER $10,000 IN FEDERAL FUNDS ANNUALLY?

A. In this modern era it is safe to say that every state and large city, as well as a myriad of local municipalities, receives some form of federal funding. Under the jurisdictional theory accepted in the court below, practically every local act of theft, fraud, embezzlement, conversion, misapplication and bribery in an amount over $5,000 is subject to federal criminal jurisdiction – no matter how remote or unconnected the underlying criminal act to federal interests. Section 666, however, cannot be stretched this far. Certainly, if Congress intended to change jurisdictional landscape and principles of federalism so drastically it would have spoken in clearer terms. *Cf. McNally v. United States*, 483 U.S. 350, 360 (1987). To prevent garden variety offenses of local character from routinely becoming "federal offenses," and to prevent unwarranted and unintended expansion of § 666, certiorari should be granted.

B. In *Salinas v. United States*, 118 S. Ct. 469 (1997), this Court recently addressed the scope of 18 U.S.C. § 666. There, the United States Marshals Service and a Texas county entered into an arrangement whereby the county took custody of federal prisoners in exchange for the

federal government providing money for improvement of the jail, as well as *per diem* compensation for each federal prisoner housed. Estimated federal payments to the county topped $900,000 per year.

The sheriff and one his deputies, Salinas, accepted bribes in return for allowing a federal prisoner to have "contact visits." The prisoner paid the sheriff $6,000 a week plus $1,000 for each contact visit. The deputy received a pickup truck and a pair of designer watches.

Before this Court, Salinas contended that his conduct did not fall within 18 U.S.C. § 666 because the government failed to prove that the bribes affected federal funds. Analyzing statutory language, this Court concluded that federal funds need not be affected to violate § 666(a)(1)(B).

Nonetheless, this Court did not completely foreclose a requirement of some nexus between the prohibited transaction and federal funds:

> We need not consider whether the statute requires some other kind of connection between a bribe and the expenditure of federal funds, for in this case the bribe was related to the housing of a prisoner in facilities paid for in significant part by federal funds themselves. And that relationship is close enough to satisfy whatever connection the statute might require.

118 S. Ct. at 474.

C. The jurisdictional theory accepted below does not fall within the parameters of *Salinas*, and cannot be squared with § 666. Consistent with the indictment, Judge Easterbrook essentially reasoned that § 666 jurisdiction

was appropriate since Grossi was an agent of Bloom Township, a government which received over $10,000 in federal funds annually. Judge Easterbrook rejected Grossi's argument that § 666 jurisdiction was wanting since the particular government agency affected by the bribery transactions did not receive over $10,000 in federal money annually. The lower court's analysis, however, is flawed to the extent it made the township the relevant recipient of federal funds.

For § 666 jurisdiction to be triggered, an entity must receive over $10,000 in federal benefits during a one year period. 18 U.S.C. § 666(b). Therefore, the threshold issue is: what particular entity must receive the federal funds to trigger § 666 jurisdiction? Section 666(b) speaks in terms of an "organization, government, or agency" being the recipient of the federal benefits. The terms "government" and "agency" are not independently defined within § 666. Rather, § 666(d)(2) collapses the two words and defines "government agency" as a "subdivision of the executive, legislative, judicial, or other branch of government." Ironically, the term "government agency" is not used elsewhere in § 666. The dissonance between § 666's use of the term "government" and § 666(d)(2)'s defining the term "government agency" thus implicates the issue of what entity must receive federal funds.

A "government agency" – here, Bloom Township's General Assistance Department – is the correct benefit recipient under § 666. This is so since § 666's failure to define "government," coupled with its supplying a definition for the term "government agency," a term not used elsewhere in the statute, renders the statute ambiguous. *Cf. United States v. Cicco*, 938 F.2d 441, 444 (3rd Cir. 1991)

(finding § 666 ambiguous on other grounds); *United States v. Stewart*, 727 F. Supp. 1068, 1070 (N.D. Tex. 1988) (same). As such, the rule of lenity applies, e.g., *Rewis v. United States*, 461 U.S. 808, 812 (1971), meaning that as between two competing interpretations, the one more favorable to the accused should be chosen. This principle favors the interpretation that it is a "government agency," as defined in § 666(d)(2), which must receive the federal benefits triggering § 666 jurisdiction.

Furthermore, courts should attempt to interpret statutes so as to give meaning to every word within the statute. *E.g., Weinberger v. Hynson, Wescott and Dunning, Inc.*, 412 U.S. 609 (1973); *United States v. Menasche*, 348 U.S. 528, 538-39 (1955). Not requiring the entity that received federal benefits to be a "government agency" reads an entire section out of the statute. In contrast, making a "government agency" the pertinent benefit recipient gives § 666(d)(2) meaning.

Legislative history – important here given the statutory ambiguity – also supports the proposition that a "government agency" must be the benefit recipient. The Senate Report for the original version of § 666 reported that Congress made it a federal crime "for an officer, employee or agent of an organization or of a State or *local government agency*" that receives over $10,000 in a year period to commit bribery or theft. S.Rep. No. 225, 98th Cong., 2d Sess. 369, *reprinted in* 1984 U.S.Code Cong. & Admin.News 3182, 3511 (emphasis added). In its original form, § 666(a) and (b) used the term "government agency," proscribing theft and bribery by agents "of an organization, or of a State or *local government agency*," and invoking jurisdiction where an organization, State or

"local government agency" received over $10,000 in federal benefits in a year. 18 U.S.C. § 666(a) and (b) (1984) (emphasis added).

In 1986, Congress amended 18 U.S.C. § 666(a) and (b) to their present forms, which invoke federal jurisdiction when an "organization, government, or agency" receives over $10,000 in federal program benefits and "an agent of [the] organization, or of a State, local, or Indian tribal government, or any agency thereof" commits the prohibited acts. In enacting this amendment, Congress intended to clarify that § 666 "covers programs of Indian Tribal governments and Tribal government agencies." *See* H.R.Rep. No. 797, 99th Cong., 2d Sess. 30, *reprinted in* 1986 U.S.Code Cong. & Admin.News 6138, 6163. The legislative history, however, does not reflect any intent to deviate from the requirement that a "local government agency" must receive in excess of $10,000 in federal benefits to prompt federal jurisdiction.[1]

That § 666 makes a government agency the germane benefit recipient is consistent not only with the title to § 666 ("Theft or Bribery Concerning Programs Receiving

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[1] Still more legislative history supports Grossi's position. Congress originally enacted § 666 "to augment the ability of the United States to vindicate significant acts of theft, fraud and bribery involving Federal monies that are disbursed to private organizations or State and local governments pursuant to a Federal program." S.Rep. No. 225, 98th Cong., 2d Sess. 369, *reprinted in* 1984 U.S.Code Cong. & Admin.News 3182, 3510. But in so doing, the Senate expressly recognized that § 666 jurisdiction was limited, and that *"not every Federal contract or disbursement of funds would be covered." Id.* at 3511 (emphasis added).

Federal Funds"), but also with cases that have interpreted § 666 to require the government to establish that the defendant was an " 'agent' of a *'government agency'* that receive[d] in excess of $10,000 from the federal government within a one-year period."[2] *United States v. Simas*, 937 F.2d 459, 463 (9th Cir. 1991) (emphasis added). *See also United States v. Valentine*, 63 F.3d 459, 464 (6th Cir. 1995) ("Congress intended to protect federal funds by exerting control over the *agencies* that benefit from them."); *United States v. Coyne*, 4 F.3d 100, 110 (2nd Cir. 1993) (approving cases invoking § 666 jurisdiction where "the *agency* received $10,000 in any given year"); *United States v. Westmoreland*, 841 F.2d 572, 576-77 (5th Cir. 1988) ("By the terms of section 666, when a *local government agency* receives an annual benefit of more than $10,000 under a federal assistance program, its agents are governed by the statute."); *United States v. Dransfield*, 913 F. Supp. 702, 706-07 (E.D. N.Y. 1996) ("In order to determine whether this Court has the requisite jurisdiction in this case under 18 U.S.C. § 666, the Court must first determine whether the SCA is a *'government agency"* as defined in section 666(b). . . . To fall within § 666(b), an *agency* must 'receive [ ], in any one year period, benefits in excess of $10,000 under a federal program.") (emphasis added in all instances). The Seventh Circuit's decision in this case deviates from these cases.

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[2] This issue is different from the one raised in *Salinas*, for in *Salinas* there was no question that the local county received federal money to house federal prisoners.

In light of the foregoing, Bloom Township's General Assistance Department must be deemed the relevant benefit recipient for purposes of § 666. It is undisputed that Bloom Township's General Assistance Department, and more particularly, the General Assistance Fund, did not receive over $10,000 in federal benefits during a one year period. Consequently, § 666 jurisdiction did not lie. Moreover, while § 666 has an overriding purpose of protecting the integrity of federal funds, that interest simply was not implicated here since the General Assistance Fund did not receive federal funds during the years at issue. *See United States v. Copeland*, 1998 WL 320128 (11th Cir. 1998) (section 666 conviction reversed because contractor for the United States Department of Defense was not an organization receiving federal benefits); *United States v. Wyncoop*, 11 F.3d 119 (9th Cir. 1993) (section 666 did not apply to employee's embezzlement of funds from a private college which received no federal funds even though the college received indirect benefits from its students' receipt of federally guaranteed loans); *Stewart*, 727 F. Supp. at 1073 (section 666 counts dismissed; notwithstanding the indictment's allegation that Bell Helicopter received in excess of $10,000 annually, the court finds that Bell Helicopter (the entity from which the defendant stole property) was not an organization that received in excess of $10,000 annually). *See also United States v. Webb*, 691 F. Supp. 1164 (N.D. Ill. 1987) (section 666 counts could not stand because entity at issue did not benefit from federal funds).

Certiorari should be granted to prevent unwarranted expansion of federal criminal jurisdiction, and to resolve the conflict between the Seventh Circuit's decision in this

case and § 666's language and legislative intent, as well as the cases cited above interpreting § 666.

CONCLUSION

WHEREFORE, Petitioner Robert A. Grossi respectfully prays that this Honorable Court grant this petition and issue a writ of certiorari to review the judgment of the Seventh Circuit.

Respectfully submitted,

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APPENDIX A

UNITED STATES of America, Plaintiff-Appellee,

v.

Robert A. GROSSI, Defendant-Appellant.

No. 97-2723.

United States Court of Appeals,
Seventh Circuit.

Argued April 3, 1998.

Decided May 4, 1998.
Rehearing and Suggestion for Rehearing Denied
May 29, 1998.

Marsha A. McClellan (argued), Office of the United States Attorney, Chicago, IL, for Plaintiff-Appellee.

Jeffrey B. Steinback (argued), Northbrook, IL, for Defendant-Appellant.

Before FLAUM, EASTERBROOK, and RIPPLE, Circuit Judges.

EASTERBROOK, Circuit Judge.

When he was supervisor (equivalent to mayor) of Bloom Township in Illinois between 1981 and 1996, Robert Grossi demanded and received bribes. After a bench trial he was convicted of violating several federal statutes and sentenced to 48 months' imprisonment. A description of one scheme among many illuminates the issues in his appeal.

Russell Guzzo, a chiropractor, remarked to Grossi that many of his clients did not pay, to which Grossi replied that the Township could handle the bills out of its general assistance program. At a later meeting Grossi told

Guzzo that, in exchange for 25% of the proceeds, Grossi would approve payment of any overdue bills Guzzo submitted. The general assistance program is a welfare program of last resort, for persons who have slipped through the cracks of other welfare programs. It operates without fixed criteria; the supervisor is entitled to authorize distributions when the need seems urgent. The Township has a staff of welfare caseworkers, but Grossi was entitled to bypass them. Grossi did not tell Guzzo that the patients had to be indigent and other sources of payment unavailable; it was enough that the bills be unpaid. Guzzo and his partner Philip Piscopo went to town, submitting not only overdue bills (some as much as six years old) from residents of the Township but also unpaid bills from patients who lived elsewhere and were not eligible for the Township's general assistance program. To increase their take, they doctored many of the bills, adding charges for services never rendered. Grossi promptly approved full payment. Guzzo and Piscopo received checks totaling $23,500 and paid Grossi his cut in cash.

Guzzo and Piscopo testified to this arrangement. Grossi asked the judge not to believe them. They submitted bogus bills to a welfare fund, cheating the Township's most needy residents; they lied to the FBI when asked about the subject and would not testify without immunity; they evaded income taxes on some of their receipts from the general assistance program; and the defense sought to persuade the judge that among the chiropractors' other sins was perjury about their relations with Grossi. The district judge allowed that he would not have found Guzzo's testimony, if uncorroborated, sufficient to

show guilt beyond a reasonable doubt. But, the judge added, Guzzo's testimony was corroborated by Piscopo and by the facts that the bills were paid swiftly (unusual for a public agency) and without the documentation usually entailed. The judge wrote: "[T]here is no conceivable explanation for the miraculous payment of $23,000 or more in old bills for patients not qualified to receive general assistance unless Mr. Grossi was the wizard behind the curtain." Grossi wants us to treat the district judge's skepticism about the chiropractors' testimony as equivalent to disbelief, and to ask whether the corroborating circumstances prove bribery. But this is not how the district judge approached the issue. In the end, he believed Guzzo and Piscopo, not because they are upstanding citizens but because their tale rang true. That was his prerogative as trier of fact. The evidence in support of this criminal episode – and the others narrated by the district judge – was adequate and to spare.

Grossi sought a new trial, providing the district judge with additional evidence of the chiropractors' low ethical standards. Piscopo may have lied about an IRS investigation; the chiropractors did not deposit checks from the general assistance fund into the partnership's main bank account; the chiropractors have not made restitution of the funds they obtained illicitly. Ordinarily a motion for a new trial requires the district judge to make an estimate about how the newly discovered evidence would have affected the jury. But after a bench trial estimation is unnecessary. Judge Plunkett held a hearing, received the evidence, and revealed exactly how it affects the trier of fact: not at all. That conclusion is no more open to question than are the judge's basic findings of

fact, and we therefore hold that the court did not abuse its discretion in denying the post-trial motion. See United States v. Fruth, 36 F.3d 649, 651-52 (7th Cir.1994).

Only two legal issues require discussion. Both concern Grossi's conviction under 18 U.S.C. § 666, which provides in part:

> (a) Whoever, if the circumstance described in subsection (b) of this section exists – (1) being an agent of an organization, or of a State, local, or Indian tribal government, or any agency thereof – (A) embezzles, steals, obtains by fraud, or otherwise without authority knowingly converts to the use of any person other than the rightful owner or intentionally misapplies, property that – (i) is valued at $5,000 or more, and (ii) is owned by, or is under the care, custody, or control of such organization, government, or agency; or (B) corruptly solicits or demands for the benefit of any person, or accepts or agrees to accept, anything of value from any person, intending to be influenced or rewarded in connection with any business, transaction, or series of transactions of such organization, government, or agency involving any thing of value of $5,000 or more; or (2) corruptly gives, offers, or agrees to give anything of value to any person, with intent to influence or reward an agent of an organization or of a State, local or Indian tribal government, or any agency thereof, in connection with any business, transaction, or series of transactions of such organization, government, or agency involving anything of value of $5,000 or more; shall be fined under this title, imprisoned not more than 10 years, or both.

> (b) The circumstance referred to in subsection (a) of this section is that the organization, government, or agency receives, in any one year period, benefits in excess of $10,000 under a Federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or other form of Federal assistance.
>
> (c) This section does not apply to bona fide salary, wages, fees, or other compensation paid, or expenses paid or reimbursed, in the usual course of business.

Grossi contends that the "circumstance described in subsection (b)" – that "the organization, government, or agency receives, in any one year period, benefits in excess of $10,000 under a Federal program" – was not satisfied because the Township's general assistance program is funded entirely by local sources. He also makes an argument based on subsection (c), to which we return.

The general assistance program is not an "organization, government, or agency". As its name implies, it is a program carried out by Bloom Township, a "government" subject to the statute if it receives more than $10,000 in federal money – as the Township concededly does. Grossi wants us to say that, unless the program or activity that was touched by bribery itself received $10,000 in federal funds, the "circumstance described in subsection (b)" does not obtain. Yet money is fungible and its effect transcends program boundaries. The general assistance program has more to spend on welfare (or dangle as a lure for bribes) if the federal government meets some of the Township's other expenses.

Congress has on occasion limited regulation to the specific activity that receives the federal money. For example, Title IX of the Education Amendments of 1972 cover the "program or activity" that receives federal money, which led the Supreme Court to hold that other programs conducted by the recipient were unaffected by the statute. Grove City College v. Bell, 465 U.S. 555, 104 S.Ct. 1211, 79 L.Ed.2d 516 (1984). Section 666(b), by contrast, refers not to a "program or activity" but to the "organization, government, or agency". The difference is palpable. Four years after Grove City College Congress amended Title IX to require the entire entity receiving federal funds to abide by the statute's substantive rules. It did this through a new provision, 20 U.S.C. § 1687(1)(A), that defines the scope of coverage as "a department, agency, special purpose district, or other instrumentality of a State or of a local government" that receives federal funds. Section 3 of Pub.L. 100-259, 102 Stat. 28 (1988). No one doubts that this language eliminates the program-or-activity restriction of Grove City College. Just so with the language of § 666(b). See United States v. Coyne, 4 F.3d 100, 108-10 (2d Cir.1993). It is not our part to trim § 666 by giving its text a crabbed reading. Salinas v. United States, ___ U.S. ___, 118 S.Ct. 469, 139 L.Ed.2d 352 (1997).

Now for Grossi's reliance on § 666(c), which carves out "bona fide salary, wages, fees, or other compensation paid, or expenses paid or reimbursed, in the usual course of business". According to the prosecutor, this language means that wages and normal reimbursements paid to a public official do not constitute bribes. According to Grossi, this language means that federal money used to

pay wages or reimburse the government's normal expenses is excluded from the $10,000, and if what remains does not reach that figure then § 666 becomes inapplicable. We need not decide who is right, because Grossi did not make such an argument at trial and thus has not preserved the issue for decision on appeal. We don't know for sure what thefederal funds were used for and therefore lack an adequate foundation for adjudication; perhaps the Township received $10,000 even if reimbursements of wages are excluded. What is more, there is no precedent on point, and the language does not clearly support Grossi. The prosecutor's position has at least collateral support from the holding of Salinas that § 666 applies even when the federal funds were not misspent or otherwise affected by the bribery. ___ U.S. at ___ - ___, 118 S.Ct. at 473-75. Thus review for plain error would not aid Grossi even if the record were fully developed. He calls the subject "jurisdictional", in an effort to take advantage of the rule that jurisdictional defects may be noticed at any time, but the district court's subject-matter jurisdiction is supplied by 18 U.S.C. § 3231 and is secure. Just the other day the Supreme Court reminded us of the gulf that separates failure of a claim on the merits from lack of jurisdiction. Steel Co. v. Citizens for a Better Environment, ___ U.S. ___, ___, 118 S.Ct. 1003, 1010, 140 L.Ed.2d 210 (1998). Grossi has forfeited any reliance on § 666(c) as a defense.

AFFIRMED.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. ROBERT A. GROSSI, Defendant.	)	No. 94 CR 799 Hon. Paul E. Plunkett (Docketed Apr. 24, 1996)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In 1981, the defendant, Robert A. Grossi, was elected superintendent of Bloom Township for a four-year term. He was reelected in 1985, 1989, and 1993, so that by the time of this trial, his stewardship had spanned some fifteen years. The superintendent's job in Bloom Township is part-time with a modest salary. Part-time or not, under Illinois law, the superintendent essentially runs all township affairs and holds the purse strings for all township funds.[1]

The United States, convinced that the superintendent had augmented his modest salary with kickbacks, theft of federal funds, and extortion, charged Grossi in four counts, including:

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[1] The accounts are segregated and entitled "corporate, general assistance, recreational, and roads and highways." The accounts are never intermingled, although occasionally one fund would borrow from another.

I. running a scheme from 1984 into 1991 to steal substantial funds of Bloom Township, a local government that received more than $10,000 per year in federal funds, in violation of 18 U.S.C. § 666(a)(1)(A);

II. conducting the affairs of the township ("the enterprise") through a pattern of racketeering activity, including mail fraud and extortion under federal law as well as bribery under Illinois law, in violation of 18 U.S.C. § 1962(c) ("RICO");

III. soliciting cash payments from two chiropractors in return for causing the township to pay some of their delinquent patients' bills, in violation of 18 U.S.C. § 666(a)(1)(B); and

IV. extorting an insurance agent to obtain kickbacks on premiums paid by the township for various insurance contracts covering township employees, in violation of 18 U.S.C. § 666(a)(1)(B).

As one might guess from this opinion, the trial was before the Court sitting without a jury by agreement of the parties. As we address the evidence at trial, we must also consider the defense's Rule 29 motion which attacks several perceived shortcomings in both the indictment and the proof. We took that motion under advisement, and we address it as a part of our analysis of each count.

Count I

This count charges a continuing seven-year scheme to embezzle and steal more than $5,000 from Bloom Township's general assistance account.

Mr. Grossi's first assault challenges the Court's jurisdiction. Section 666(a)(1)(A) requires that the local government or agency, which is the victim of the theft, must have received benefits of more than $10,000 each year in question from a federal program involving a contract subsidy, loan, guarantee, insurance, or other assistance. Mr. Grossi points out that the federal funding of Bloom Township (which clearly exceeded $10,000 in each year of the Grossi administration) went to its general corporate fund and represented repayment of township advances for youth and senior citizens programs. Grossi's alleged theft, on the other hand, was from the township's general assistance account, and the evidence at trial made abundantly clear (Mr. Cawlas's testimony and exhibits) that no federal funds were ever intended for or placed in that account. The general assistance program was instead funded by local real estate taxes. Thus, the argument goes, the theft from the general assistance account involved only state funds, and this Court lacks jurisdiction without theft of federal monies.

This rather ingenious argument hinges on the notion that the General Assistance Department is a government agency, separate and apart from the township itself, and the real victim of the alleged theft. Bloom Township is simply another government unit. The hinge buckles as it attempts to support the argument. First, the indictment clearly charges that *Bloom Township*, not the General Assistance Department, received more than $10,000 in federal benefits, and, of course, it did. Section 666 was designed to allow the United States to prosecute acts of theft "involving federal monies that are disbursed to

private organizations or state or local governments pursuant to a federal program." *United States v. Moeller*, 987 F.2d 1134, 1136 (5th Cir. 1993) (quoting 1984 U.S.C.C.A.N. 3182, 3510-3511). The courts have repeatedly held that the United States need not trace its funds to the tainted transaction of the government agency. *See United States v. Coyne*, 4 F.3d 100 (2nd Cir. 1993); *Stuko v. Simas*, 937 F.2d 459 (9th Cir. 1991). In *Coyne*, the court opined, "the language [of section 666] neither explicitly nor implicitly requires that the $10,000 be directly linked to the program that was the subject of the bribe." 4 F.3d at 109. Bloom Township obtained the federal funds. Bloom Township was run by Defendant Grossi, lock, stock, and barrel. Grossi's alleged thefts were from the township funds. That's enough. We do not believe that existing case law or common sense supports the idea that the federal funds must [sic] traced to the account that is looted. When any funds are stolen from a local government that is in part supported by federal money, the federal funds may be at risk. We believe the mantel of section 666 is broad enough to cover this case.

The defendant's second sortie fares better. He posits that some of the alleged thefts were less than $5,000 in any one year. In fact, *United States v. Valentine*, 63 F.3d 459, 462 (6th Cir. 1995), holds that a theft of $5,000 or more must, under section 666(a)(1)(A), occur within a one-year period. Although the government attempts to both distinguish *Valentine* and find flaws in its logic, we believe the decision is not only well-reasoned but dispositive. Thus, the Court can only consider three of the seven allegations of theft in Count I – Paragraph 4 (payroll checks from general assistance to Ms. Rossi totaling

$7,200), Paragraph 5 (payroll checks from general assistance to Mr. Bamonti totaling more than $5,000), and Paragraph 10 (payments to two chiropractors from the general assistance fund for overdue bills to patients totaling $23,000). The Rossi and Bamonti payments occurred in 1985-1986; the chiropractor payments between 1989 and 1991. The other alleged thefts occurred in between and involved significantly smaller amounts of money.

Earlier, we denied defendant's motion to dismiss Count I, but we are now persuaded that the three separate transactions occurring over a five or six-year period from 1986 to 1991 cannot be the same continuing scheme. Although all the money came from the general assistance funds, the salary checks to Ms. Rossi and Mr. Bamonti were to help two friends in financial trouble.[2] These salary payments allowed Grossi's friends to repay personal loans, which in one case had been cosigned by Grossi, and in the other had been made because of collateral posted by Grossi. Although we hardly suggest that such conduct is appropriate or even legal, it is hard to swallow the notion that it is all part of one continuing scheme, which, four to five years later, found Mr. Grossi obtaining kickbacks from chiropractors, whose bills were paid by Bloom Township's general assistance fund. As we noted earlier, there is one common thread running through the allegations in Count I – Mr. Grossi treated the general assistance fund like his own checking account, which he could use to enrich himself or help his friends.

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[2] The indictment further charges that neither Rossi nor Bamonti did a single day's work during the time each was on the payroll – so-called ghost payrollers.

But the actions and benefits to Mr. Grossi were vastly different in 1985 and 1986 when he used township funds to help his friends (and indirectly himself) from those in 1989-1991 when he sought kickbacks or other benefits from those seeking to do business with the township. Further, this quite different conduct occurred several years apart. Mr. Grossi seems to have become bolder as the years progressed and turned from helping others to helping himself. Yet, we find no continuing scheme. The government's glass slipper is just too wide to fit Cinderella. All the charges, except Number 3 (chiropractors' bills), lack a common scheme and thus are barred by various statutes of limitations. The chiropractor scenario does survive the statute of limitations, but it is not charged as a scheme in and of itself and, in any event, forms the basis for Counts III and IV, which we address later. The defendant is found not guilty of Count I.

Count II

Count II charges a RICO violation with Grossi as the person and Bloom Township as the enterprise, and some seven separate criminal acts alleged to constitute a pattern of operating the enterprise through racketeering activity. As in Count I, only one of the racketeering acts occurs within the statute of limitations – namely, our earlier acquaintance, the kickbacks from the chiropractors, which make up Racketeering Act 3. In order to convict the defendant of a RICO violation, he must be found guilty of this particular act and at least one other, and those two or more acts must constitute a pattern of

racketeering, both in terms of relationship and continuity.[3] We now turn to an analysis of those questions.

Doctor Guzzo is a chiropractor who has practiced in Bloom Township for several years. In early 1988, he formed Chiro-Med Limited, a joint venture with another chiropractor, Doctor Piscopo. Doctor Guzzo has been friendly with Grossi for many years and once treated his daughter without charge. In the late fall of 1989, Doctor Guzzo testified that he had a conversation with Grossi at a wedding reception. Guzzo complained to Grossi that although his practice was good, he had a poor cash flow because some of his patients simply did not pay their bills. Grossi told the doctor of the general assistance program, which, among other things, paid medical bills for poor people.

A few weeks later, his interest and undoubtedly his greed aroused, Guzzo called Grossi and arranged a meeting. At the meeting, Grossi proposed that Guzzo send all his overdue bills to Grossi for payment from the general assistance fund. Grossi asked for a kickback of twenty-five percent and Guzzo agreed. According to Guzzo, he then sent several batches of bills and received payment from the Bloom Township assistance fund. Guzzo then paid Grossi his twenty-five percent. This little vignette involves at least two separate crimes. The bills should never have been submitted to General Assistance at all since most, if not all, were to patients who were not

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[3] We often omit citations to case law because all of it is contained in the government's submissions, which set forth the law governing the counts of the indictment in the form of jury instructions. Those are incorporated by reference.

indigent and thus ineligible for benefits. In addition, kickbacks to public officials are never a good idea. If Guzzo is believed, Grossi is guilty as charged in Racketeering Act 3, which includes allegations of bribery under 720 ILCS 5/33-1(d), official misconduct under section 33-3(d), and extortion under 18 U.S.C. § 1951(b)(2). Should Guzzo be believed? He is not the most reliable of witnesses. The doctor is, by his own admission, a cheat. He knowingly submitted his patients' overdue and probably uncollectible bills to a fund designed to help defray the medical costs of the indigent of Bloom Township. Yet he realized that most, if not all, of those patients would not qualify under the fund. To make the whole sorry mess worse, he actually inflated some of those bills and changed records on others to show that patients were residents of Bloom Township when they were not.

The doctor originally told the FBI agent that there was no kickback scheme with Grossi or anyone else. The doctor would not testify without a judicial grant of immunity (18 U.S.C. § 6001 *et seq.*), thus guaranteeing he would never be prosecuted for his part in the fraud he related. Doctor Guzzo's story, without substantial corroboration, is not within hailing distance of beyond a reasonable doubt. But his testimony is corroborated in several different ways.

First, his partner, Doctor Piscopo, who also participated in the fraud at Doctor Guzzo's suggestion, tells a similar story. True, unlike Doctor Guzzo, he never met with Grossi, but like Guzzo, his bills were submitted and paid without question. Although there are differences in their accounts and neither is a paragon of virtue, the stories generally support each other.

Second, the Grossi and Piscopo exhibits show the submissions of the bills and payments by return mail – remarkable, if not unprecedented, promptness by a government agency.

Third, the twenty-five percent payment to Grossi is reminiscent of the payments made by the insurance agent, Schultz, who testified that he agreed to give twenty-five percent of his commissions to Grossi in order to do business with Bloom Township.

Fourth, and perhaps most importantly, there is no documentation to support the issuance of checks from general assistance to the doctors. Ms. Ruiz, who ran the general assistance program, was at a loss to explain how these payments were made when her files are devoid of any reference to these transactions. There were no files, no eligibility findings, and not even any check stubs. So far as her records show, these substantial payments never happened. Ms. Ruiz concluded there was only one way such a thing could happen – the bills were directly sent to Mr. Grossi, who had the power to bypass the office protocol.

In short, there is no conceivable explanation for the miraculous payment of $23,000 or more in old bills for patients not qualified to receive general assistance unless Mr. Grossi was the wizard behind the curtain. He directed the fund to pay bills that never should even have been submitted. He did not do so to help the indigent but two well-to-do doctors and himself. Mr. Grossi is found to have committed Racketeering Act 3 of Count II beyond a reasonable doubt.

In addition, we find that Grossi committed three other racketeering acts, namely Acts 1, 2, and 7. Mr. Schultz, the insurance agent who did business with both Mr. LoBue (a commissioner of Chicago Heights who reappears later) and Mr. Grossi, testified that he repeatedly paid kickbacks to both. We have some difficulty with the credibility of Mr. LoBue, but none with that of Mr. Schultz. He was completely believable when he testified that he was able to place insurance with Bloom Township because he secretly paid one-fourth of his commissions to Grossi. Despite a skillful cross-examination, we can find no reasonable explanation as to why Mr. Schultz would lie about something so important. Mr. Schultz had little to gain by this testimony and was obviously pained and embarrassed in giving it.

Schultz was introduced to Grossi by LoBue as a "right kind of guy," which, given LoBue's admitted machinations in public office, could only have meant a bribe payer. Schultz convincingly described the meetings in which, first, Grossi learned how the kickback worked; then, the unforgettable time when Grossi, while accepting one of the bribes, told Schultz to forget the small change; and finally, the last one, where Schultz lost the account in 1991. It was then that Grossi told him, "'Tis for the best; the heat is on." The records of Mr. Schultz, while they do not in and of themselves prove a bribe, support his version of the facts. In fact, Mr. Schultz wrote one check made out to cash for the exact amount of the kickback for Mr. Grossi (twenty-five percent of his seven percent commission), down to the penny. We are convinced by Mr. Schultz's testimony and find Mr. Grossi guilty beyond a reasonable doubt of Racketeering Act 2.

We also find Grossi guilty of Racketeering Act 1, a shabby little story. Nick LoBue, a friend and associate of Grossi, operated a mosquito spraying service in addition to his job as a commissioner in Chicago Heights. LoBue testified that he and Grossi hatched a scheme in which LoBue would send a bill for $1,980 to Bloom Township for mosquito abatement spraying in the woods near Skyline Pool, a park facility run by the township. The bills were sent on three or four occasions and promptly paid. LoBue testified that he doubted that little of the spraying was actually done because there was only one work order. LoBue and Grossi then split the money fifty-fifty. Again, if believed, a story of fraud, bribery, and corruption. But LoBue is a primer on impeachment. There are four ways under the Federal Rules of Evidence to impeach a witness, and LoBue fits every one – bias, prior dishonest acts, prior convictions, and prior inconsistent statements. But like Doctor Guzzo, the government's extensive corroboration demonstrates that LoBue is actually being truthful.

Doctor Liem, the head of the Southside Mosquito Abatement District, testified that townships and just about anyone else can obtain mosquito spraying without charge. It simply requires a phone call to his office. This service is paid for by local taxes, and each year these services are touted in an annual report sent to all government agencies on the south side, including Mr. Grossi's Bloom Township. Yet Bloom Township paid for what it knew could be done for free. Why, one might ask? Easy – Mr. Grossi got one-half of the payment from the general assistance fund back again. Only now it benefited him,

not the indigent, and best of all, being in cash, it was tax free. We find Grossi guilty of Racketeering Act 1.

Finally, we find Mr. Grossi guilty of Racketeering Act 7, one of the more intriguing charges in the indictment. Bloom Township owned an improved parcel of land called Bloom Market. Its owner and major tenant had been Jewel, which closed and then simply gave the property to Bloom Township. The property quickly became a white elephant – most of it was boarded up and the parking areas were in disrepair. In the late 1980s, Superintendent Grossi formed a blue-ribbon committee to collect and evaluate proposals for the property from interested developers. One such developer, a Mr. Tulchinsky, studied the property and submitted a detailed proposal. The defense suggests the proposal was not worth Grossi's time because the purchase price was one-half the asking price ($500,000 instead of one million) and was payable in $100,000 increments beginning in the sixth year and ending in the tenth year. Further, it sought TIFs (tax relief), which Grossi had stated publicly could not be part of the deal. The defense had other problems with the bona fides of the offer, but given the sorry condition of the property, we do not share their criticism. In any event, Mr. Grossi met privately with Mr. Tulchinsky to discuss his offer and then asked him to have lunch with Mr. Puinti, the fire chief for Chicago Heights, and, not so coincidentally, Mr. Grossi's cousin. Grossi suggested that Puinti would make an excellent partner in the endeavor. Mr. Tulchinsky never had a lunch quite like this one. Mr. Puinti, it seemed, knew absolutely nothing about the property or Tulchinsky's proposal. In fact, Puinti knew nothing about real estate development at all. Mr. Puinti

had no capital to invest and so really had no value at all to Mr. Tulchinsky as a partner. There was only one reason for Mr. Puinti – a straw man for Mr. Grossi, who, as a half owner, might then seek the approval of Tulchinsky's proposal from his blue-ribbon committee. This scenario constitutes solicitation of a bribe, pure and simple. Mr. Tulchinsky had no axe to grind. He walked away from the project when he learned that he was expected to accept Puinti as his partner. His testimony rang true. Mr. Grossi is guilty of Racketeering Act 7.

We find Mr. Grossi not guilty of Racketeering Acts 4, 5, and 6. Act 4 rests on the testimony of Ms. Rossi, who testified that Grossi had cosigned a note to enable her to get a loan, and after she lost her job, she could not keep up the payments. Ms. Rossi told how Grossi put her on the payroll of the General Assistance Department so that she could make the loan payments. She performed no work for the township in return for these payments. While it is true that Ms. Rossi's testimony is supported in part by her payroll checks, we are reluctant to find guilt beyond a reasonable doubt when Ms. Rossi had been Grossi's former girlfriend, and her relationship with him had ended badly. Further, by her own admission, Ms. Rossi's recollection of the events after early 1986 is almost nonexistent ("very little recollection of that time period"). It is probable she was a ghost payroller, but probable is not enough.

We also find the testimony of Bamonti (the other ghost payroller), which was admitted as an exception to the hearsay rule under Federal Rule of Evidence 804(3), unpersuasive. His credibility was undercut in his interview with the defense investigator. No documents were

presented to support his assertion that he never worked for the township. While it is clear that Bamonti was on the payroll of Bloom Township, we are unconvinced, based on his word alone, that he never worked for the township.

Finally, as to Act 6, the testimony involving LaRose and his car allowance proved very little. He did work for the township and needed a car to get to his assignments. Perhaps LaRose was given an unnecessary job as a favor, and perhaps he was not entitled to car or car allowance. No matter; we find insufficient proof of racketeering act.

The last issue we must address is the existence of a pattern of racketeering. Do the actions Grossi committed through his position at Bloom Township have the relationship and continuity necessary for a RICO pattern? We conclude they do. Racketeering acts are related if they have the same purposes, victims, or methods of commission and are not isolated or disconnected events. Mr. Grossi, particularly after 1987, engineered a series of illegal activities designed to enrich himself. He sought and obtained kickbacks on township insurance business, mosquito abatement services, and two doctors' overdue accounts. He even tried (and failed) to obtain a half interest in a project involving township property. When he needed money to further the ventures, it always came from the general assistance account, a fund where he had significant discretion in how the money was spent and how it was accounted for. Grossi was always the actor and the taxpayers always the victims, and Grossi always the one who was enriched. The acts continued over a three to four-year period and, sadly, represent Mr. Grossi's regular way of doing business from the middle

of his second term until the time "the heat was on" in 1991 and 1992. While we could not find a single scheme in Count I, we have no difficulty finding a pattern of racketeering beyond a reasonable doubt. The effect on intra-state commerce is uncontroverted. The chiropractors, for example, purchased all kinds of supplies outside Illinois.

There is, accordingly, a finding of guilt on Count II, including four of the seven charged predicate acts.

Count III

As earlier indicated, this count involves the chiropractors and their delinquent bills, which were improperly paid by Mr. Grossi in order to receive a kickback, adding five or six thousand dollars to Mr. Grossi's income over a two or three-year period. Mr. Grossi is found guilty of violating section 666(a)(1)(B) for the reasons set forth in Count II. Some years Mr. Grossi did not receive $5,000 or more for himself, but each year the general assistance fund was defrauded out of substantially more than $5,000.

Count IV

Count IV also involves the chiropractors and their bills and charges this conduct as extortion under 18 U.S.C. § 1951(b)(2). The extortion affected commerce as the term is used in section 1951(b)(3) in several ways. Mr. Grossi is found guilty of Count IV for the same reasons he was found guilty of Racketeering Act 3 of Count II.

Conclusion

There, accordingly, is a finding that the defendant, Robert A. Grossi, is guilty of Count II (RICO), Count III (theft of government funds), and Count IV (extortion under color of office). Mr. Grossi is found not guilty of Count I. Judgment of conviction is entered based on these findings.

ENTER:

/s/ Paul E. Plunkett
PAUL E. PLUNKETT
UNITED STATES DISTRICT JUDGE

DATED: April 23, 1996

APPENDIX C

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

May 29, 1998.

Before

Hon. JOEL M. FLAUM, Circuit Judge

Hon. FRANK H. EASTERBROOK, Circuit Judge

Hon. KENNETH F. RIPPLE, Circuit Judge

UNITED STATES OF AMERICA, *Plaintiff-Appellee,*	) Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
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ROBERT A. GROSSI, *Defendant-Appellant.*	) No. 94 CR 799) Paul E. Plunkett, *Judge.*

Order

Defendant-appellant filed a petition for rehearing and suggestion of rehearing en banc on May 18, 1998. No judge in regular active service has requested a vote on the suggestion of rehearing en banc, and all of the judges on the panel have voted to deny rehearing. The petition for rehearing is therefore DENIED.